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April 27, 2018

**BY EMAIL**

Sharon E. Kivowitz, Esq.  
Office of Regional Counsel  
US Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007

Re: Unilateral Administrative Order for Remedial Design of OU-1– New  
Cassel/Hicksville Groundwater Contamination Superfund Site  
Index No. CERCLA-02-2018-2015

Dear Sharon:

On behalf of our client Arkwin Industries Inc. we submit the following comments to the Unilateral Administrative Order (“UAO”), issued by the United States Environmental Protection Agency (“USEPA”) on March 22, 2018

**Deficiencies of the OU-1 Conceptual Site Model**

For the administrative record, we have expressed these comments in numerous prior correspondence to EPA, as an individual respondent in the action, and /or as part of group comments with other respondents. Beginning with comments to the Proposed Remedial Action Plan (“PRAP”) on September 23, 2013 (see Attachment 1) , we expressed that USEPA’s Conceptual Site Model (“CSM”), which is the basis for the Record of Decision, is fundamentally flawed and does not adequately or accurately characterize groundwater contamination at Operating Unit 1 (“OU-1). The data is incomplete, and fails to take into account massive amounts of environmental investigation-related data upgradient of OU-1. Additionally, flawed data, relied on by USEPA, were collected using inappropriate methods . For example, use of hollow stem augers may have caused cross-contamination. Appendix A to that correspondence

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lists all the studies that USEPA should have but failed to consider in the development of the CSM and the PRAP.<sup>1</sup>

### **Deficiencies of the Record of Decision Remedy for Central Plume**

The In-Wall Vapor Stripping (“IWVS”) remedy for the Central Plume as described in the Record of Decision (“ROD”) was not adequately evaluated. The choice of the remedy was based on outdated and incomplete information. The costs are not in conformance with the National Contingency Plan in that the IWVS remedy will likely fail. The IWVS will be susceptible to clogging from the precipitation of iron once the groundwater has been oxygenated.<sup>2</sup> This will compromise the effectiveness of the Proposed Plan. Overall, the Proposed Plan introduces short-term risks without achieving any reduction of long term risks. Furthermore, USEPA does not yet even know if the in-well vapor stripping process will be able to achieve Class GA drinking water standards. The depth of the deepest contamination which is estimated to extend to 502 feet below ground surface increases the design challenges. Limits on the hydraulic depth to which the compressed air can be injected into the aquifer limits the effectiveness of the stripping method to only a portion of the well. Yet, the EPA insists on imposing this remedy.

The IWVS remedy will be disruptive to the community while providing limited benefit. The August 13, 2013 public meeting was inadequately promoted and poorly attended. Construction of the magnitude required for the implementation of the remedy will present an intolerable and long term disruption to commercial and retail operations in the area. The physical construction and ongoing operation of the components of the remedy is a matter of much public impact and distress. IWVS and ex-situ groundwater extraction and re-injection will require multiple sites for wells to be drilled and installed. The construction of these systems is disruptive to traffic, will cause dust and noise and inaccessibility to large areas at a time and will require vigilant security to avoid ultimately becoming sites of "attractive nuisance" to children, teenagers and others. Relying on in-well vapor stripping in a densely populated setting is unwise. It will require the installation of large numbers of wells and associated infrastructure which will result in a significant disruption in a largely residential area.

EPA did not adequately address comments to the PRAP. The ROD was issued only one week after joint comments were submitted by respondents in the September 23, 2013 letter.

### **Deficiencies to the UAO Regarding Modification of the Remedy**

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<sup>1</sup> USEPA acknowledged in the Supplemental Feasibility Study (USEPA, 2013) that "there is greater uncertainty with the groundwater sampling data collected from the temporary well locations relative to the permanent monitoring locations."

<sup>2</sup> USEPA, Supplemental Feasibility Study Technical Memorandum for Operable Unit 1 for the New Cassel/Hicksville Groundwater Contamination Superfund Site, at 6-12 (July 2013)

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For the reasons stated above, and as previously expressed to EPA in a May 9, 2016 correspondence (see Appendix 2), Arkwin is concerned about the lack of a formalized method of evaluation of the Preliminary Design Investigation results prior to proceeding to Remedial Design and choice of a remedy. As per the UAO, the EPA concedes only that a request for a modification of the remedy may be submitted in writing and is at the unilateral discretion of the EPA.

### **Certain Deadlines to the UAO May be Unattainable**

As previously expressed to EPA, Arkwin believes that deadlines contemplated in the OU-1 Scope of Work will be severely delayed or unattainable from the inability to secure access from property owners, despite “best efforts” (see, Appendix 2). During the 2009 Pre-Design Investigation, the New York Department of Environmental Conservation (“NYSDEC”) found that local town and county officials were concerned that the installation and operation of IWVS units within public rights-of-way will be logistically difficult given the presence of many utilities, including water, gas, electric, sanitary sewer, and storm sewers (see Appendix 1).

### **Upgradient Parties Should be Joined to the UAO and EPA Should Enforce Against Recalcitrant and Non-Complying Parties**

USEPA's decision to ignore the so-called "Upgradient Plume" from Sylvania and General Instruments (GI)/Vishay and Sulzer Metco in selecting the proposed remedy for OU-1 is a critical error as the "Upgradient Plume" has both historically contributed and continues to contribute contaminated mass to the groundwater found at OU-1, OU-2 and OU-3. In this regard, Arkwin incorporates and reiterates herein the arguments and factual information set forth in comments to the UAO issued to EPA by IMC Eastern Corporation (“IMC”) and Island Transportation Corp. (“ITC”), as well as their consultant Gradient, on April 25, 2018. Arkwin also incorporates and reiterates herein comments provided on August 14, 2007, to EPA by EnSafe, Inc. Inc., consultant to the Frost Street Parties (Next Millennium).

Likewise, it is highly unfair to ask complying parties to sign on to a UAO when, after all this time of negotiating with the EPA, certain entities may be dismissed or found only to be *de minimis* parties to the case, based on such non-defensible positions such as being “merely an owner” of a contaminated site, or unsupported claims of attenuated or no discharge from their sites, or inability to pay. EPA cannot expect a shrinking pool of respondents to take on work from recalcitrant or non-complying parties, especially when EPA has expressed an unwillingness to address the work of orphan sites themselves.

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Arkwin asks EPA to consider and fully address these comments in their deliberation and finalization of the UAO.

Very truly yours,

*s/Suzanne M. Avena*

Suzanne M. Avena

cc: All PRP Counsel (via email)  
A. Crossman

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Attachment 1

September 23, 2013 Comments to the Proposed Remedial Action Plan and Exhibits

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Appendix 2

May 9, 2016 Letter Comments to Settlement Agreement

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